
STATUTORY INSTRUMENTS

1995 No. 3213

The Pensions (Northern Ireland) Order 1995

PART II

OCCUPATIONAL PENSIONS

Equal treatment

The equal treatment rule

62.—(1) An occupational pension scheme which does not contain an equal treatment rule shall be treated as including one.

- (2) An equal treatment rule is a rule which relates to the terms on which—
- (a) persons become members of the scheme, and
 - (b) members of the scheme are treated.
- (3) Subject to paragraph (6), an equal treatment rule has the effect that where—
- (a) a woman is employed on like work with a man in the same employment,
 - (b) a woman is employed on work rated as equivalent with that of a man in the same employment, or
 - (c) a woman is employed on work which, not being work in relation to which sub-paragraph (a) or (b) applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision) or equal value to that of a man in the same employment,

but (apart from the rule) any of the terms referred to in paragraph (2) is or becomes less favourable to the woman than it is to the man, the term shall be treated as so modified as not to be less favourable.

(4) An equal treatment rule does not operate in relation to any difference as between a woman and a man in the operation of any of the terms referred to in paragraph (2) if the trustees or managers of the scheme prove that the difference is genuinely due to a material factor which—

- (a) is not the difference of sex, but
- (b) is a material difference between the woman's case and the man's case.

(5) References in paragraph (4) and Articles 63 to 65 to the terms referred to in paragraph (2), or the effect of any of those terms, include—

- (a) a term which confers on the trustees or managers of an occupational pension scheme, or any other person, a discretion which, in a case within any of sub-paragraphs (a) to (c) of paragraph (3)—
 - (i) may be exercised so as to affect the way in which persons become members of the scheme, or members of the scheme are treated, and
 - (ii) may (apart from the equal treatment rule) be so exercised in a way less favourable to the woman than to the man, and

(b) the effect of any exercise of such a discretion;

and references to the terms on which members of the scheme are treated are to be read accordingly.

(6) In the case of a term within paragraph (5)(a) the effect of an equal treatment rule is that the term shall be treated as so modified as not to permit the discretion to be exercised in a way less favourable to the woman than to the man.

Equal treatment rule: supplementary

63.—(1) The reference in Article 62(2) to the terms on which members of a scheme are treated includes those terms as they have effect for the benefit of dependants of members, and the reference in Article 62(5) to the way in which members of a scheme are treated includes the way they are treated as it has effect for the benefit of dependants of members.

(2) Where the effect of any of the terms referred to in Article 62(2) on persons of the same sex differs according to their family or marital status, the effect of the term is to be compared for the purposes of Article 62 with its effect on persons of the other sex who have the same status.

(3) An equal treatment rule has effect subject to paragraphs 5 and 6 of Schedule 5 to the Social Security (Northern Ireland) Order 1989(1) (employment-related benefit schemes: maternity and family leave provisions).

(4) Article 62 shall be construed as one with section 1 of the Equal Pay Act (Northern Ireland) 1970(2) (requirement of equal treatment for men and women in the same employment); and sections 2 and 2A of that Act (disputes and enforcement) shall have effect for the purposes of Article 62 as if—

- (a) references to an equality clause were to an equal treatment rule,
- (b) references to employers and employees were to the trustees or managers of the scheme (on the one hand) and the members, or prospective members, of the scheme (on the other),
- (c) for section 2(4) there were substituted—

“(4) No claim in respect of the operation of an equal treatment rule in respect of an occupational pension scheme shall be referred to an industrial tribunal otherwise than by virtue of subsection (3) unless the woman concerned has been employed in a description or category of employment to which the scheme relates within the six months preceding the date of the reference.”, and

- (d) references to section 1(2)(c) were to Article 62(3)(c).

(5) Regulations may make provision for the Equal Pay Act (Northern Ireland) 1970(3) to have effect, in relation to an equal treatment rule, with prescribed modifications; and paragraph (4) shall have effect subject to any regulations made by virtue of this paragraph.

(6) Article 62, so far as it relates to the terms on which members of a scheme are treated, is to be treated as having had effect in relation to any pensionable service on or after 17th May 1990.

Equal treatment rule: exceptions

64.—(1) An equal treatment rule does not operate in relation to any variation as between a woman and a man in the effect of any of the terms referred to in Article 62(2) if the variation is permitted by or under any of the provisions of this Article.

(2) Where a man and a woman are eligible, in prescribed circumstances, to receive different amounts by way of pension, the variation is permitted by this paragraph if, in prescribed

(1) 1989 NI 13.

(2) 1970 c. 32 (N.I.).

(3) 1970 c. 32 (N.I.).

circumstances, the differences are attributable only to differences between men and women in the benefits under sections 43 to 55 of the Contributions and Benefits Act (state retirement pensions) to which, in prescribed circumstances, they are or would be entitled.

(3) A variation is permitted by this paragraph if—

(a) the variation consists of the application of actuarial factors which differ for men and women to the calculation of contributions to a scheme by employers, being factors which fall within a prescribed class or description, or

(b) the variation consists of the application of actuarial factors which differ for men and women to the determination benefits falling within a prescribed class or description;

and in this paragraph “benefits” include any payment or other benefit made to or in respect of a person as a member of the scheme.

(4) Regulations may—

(a) permit further variations, or

(b) amend or repeal paragraph (2) or (3);

and regulations made by virtue of this paragraph may have effect in relation to pensionable service on or after 17th May 1990 and before the date on which the regulations are made.

Equal treatment rule: consequential alteration of schemes

65.—(1) The trustees or managers of an occupational pension scheme may, if—

(a) they do not (apart from this Article) have power to make such alterations to the scheme as may be required to secure conformity with an equal treatment rule, or

(b) they have such power, but the procedure for doing so—

(i) is liable to be unduly complex or protracted, or

(ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(2) The alterations may have effect in relation to a period before the alterations are made.

Equal treatment rule: effect on terms of employment, etc.

66.—(1) In section 6 of the Equal Pay Act (Northern Ireland) 1970⁽⁴⁾ (exclusions), for subsections (1A) and (2) (exclusion for terms related to death or retirement) substitute—

“(1B) An equality clause shall not operate in relation to terms relating to a person’s membership of, or rights under, an occupational pension scheme, being terms in relation to which, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate if the terms were included in the scheme.

(1C) In subsection (1B), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.”.

(2) In Article 6(1) of the Sex Discrimination (Northern Ireland) Order 1976⁽⁵⁾ (victimisation of complainants, etc.)—

(4) 1970 c. 32 (N.I.)

(5) 1976 NI 15.

- (a) in sub-paragraphs (a) to (c), after “Equal Pay Act” insert “or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995”, and
 - (b) at the end of sub-paragraph (d) add “or under Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995”.
- (3) In Article 8 of the Sex Discrimination (Northern Ireland) Order 1976 (discrimination against applicants and employees), for paragraph (4) substitute—
- “(4) Paragraphs (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.
- (4A) In paragraph (4), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.”
- (4) Regulations may make provision—
- (a) for the Equal Pay Act (Northern Ireland) 1970(6) to have effect, in relation to terms of employment relating to membership of, or rights under, an occupational pension scheme with prescribed modifications, and
 - (b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms.
- (5) References in paragraph (4) to terms of employment include (where the context permits)—
- (a) any collective agreement or pay structure, and
 - (b) an agricultural wages order within section 5 of the Equal Pay Act (Northern Ireland) 1970(7).

(6) 1970 c. 32 (N.I.)
(7) 1970 c. 32 (N.I.)